IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 387 of 2001 (S/B)
(Old No. 20698/1999)

Rama Tirth, S/o Late Raghu Nath Singh,
Retired University Librarian,
Govind Ballabh Pant University if Agriculture & Technology,
1/130 Phoolbagh, Pant Nagar,
District Udham Singh Nagar. …… Petitioner

Versus

G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar,
Through its Vice-Chancellor & Comptroller,
And another ……. Respondents

Hon. P.C.Verma, A.C.J.
Hon. Rajesh Tandon, J.

Heard Ms. V.B.S. Negi, learned counsel for the petitioner and Mr. Rajendra Dobhal, learned counsel for the respondents.

By the present writ petition, the petitioner has prayed for issue of a writ, order or direction in the nature of certiorari to quash the letter of Comptroller of University dated 7.4.99/9.4.99, by which an amount of Rs. 2,86,054.15/- has sought to be recovered from the petitioner.

Learned counsel for the petitioner has submitted that the petitioner was granted revised pay-scale by the U.G.C. in the year 1976. Since, the University had considered the qualifications in favour of the petitioner and the petitioner was granted the pay-scale according to the qualifications, therefore, respondents are stopped from making any recovery at the behest of the State Government.

Learned counsel for the University has submitted that the recovery is being made on the basis of audit objection that the petitioner has wrongly been paid higher pay-scale though he was not eligible to be paid the said pay-scale. After the audit objection, the University has initiated the recovery proceedings as directed by the State Government.

The petitioner was granted higher pay-scale by the University approval to which was given by the higher authorities and the petitioner was being paid higher pay-scale and he continued to receive

the said pay-scale up to 1997. Thereafter, the petitioner retired. The petitioner was given higher pay-scale by the University after granting the relaxation in qualification in favour of the petitioner. Therefore, the petitioner cannot be penalized for his no fault and it is not open for the University to recover the amount, which is sought to be recovered by the University from the petitioner. If the University is answerable to the State Government, it is for the University to bear the liability as the University, itself, has granted the relaxation to the petitioner.

In the case of Shyam Babu K. Verma and others Vs. Union of India & others reported in 1994 (2) SCC 521, the Hon'ble Apex Court has held as under:

> *"Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the commendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondent, the petitioners being in no way responsible for the same."*

In view of the above, we quash the impugned letter dated 09.04.1999 contained in Annexure 22 to the writ petition by which the order of recovery of the amount from the petitioner by way of deduction to be made in the pension was issued. We also direct the University to release all the post-retiral benefits to the petitioner.

Therefore, the writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.) **(P.C.Verma, A.C.J.)**

Dt. 11.03.2004.
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